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February 6, 2009

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**COMMISSION ON
STATE MANDATE**

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: 02-TC-21
Contra Costa Community College District
Tuition Fee Waivers

Dear Ms. Higashi:

I have received the Commission Draft Staff Analysis (DSA) issued on December 4, 2008, to which I respond on behalf of the test claimant.

Member of Armed Forces (Education Code Section 68075; California Code Regulations, Title 5, Sections 54042 & 54050)

The DSA (41) concludes that section 54042 is not a state-mandated new program or higher level of service. The DSA interprets the language of Section 54042 where the student "should" produce evidence as not requiring the student to produce evidence of the date of assignment to California. Section 54042 states as follows, "A student claiming application of section 68075 of the Education Code *must* provide a statement from the student's commanding officer or personnel officer that the student's assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California." (Emphasis added.)

The DSA's interpretation is inaccurate. Section 54042 requires a student to provide a statement from the student's commanding officer or personnel officer with the word "must." The second sentence of Section 54042, where the student "should" produce evidence, is an additional requirement arising from the first requirement in which the student needs to have a written statement. Therefore producing evidence of the date of assignment to California is required because it stems from the requirement to provide the written statement from the commanding officer or personnel officer.

The DSA (41) states that under current CCR Section 54050, a student who is a military member on active duty is entitled to resident classification for the purpose of determining the amount of tuition and fees, and the exemption from nonresident tuition is indefinite under the current regulation for undergraduates. However, it concluded that if the student is never reclassified as a resident, this may mean a lower level of service than under prior law, and therefore section 54050 does not impose a state mandated new program or higher level of service. This conclusion is ambiguous and unclear. "[M]ay mean a lower level of service than under prior law" does not state whether there is a lower or higher level of service.

Nonresident California High School Graduates (Education Code Section 68130.5, California Code Regulations, Title 5, Section 54045.5, subdivision (b) & Chancellor's Office Document)

The DSA (50) concluded that the following phrase in subdivision (b) of section 54045.5 is not a state mandate: "Any student seeking an exemption under subdivision (a) services . . . may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption." The DSA concluded that since the regulation does not expressly require the submission of additional documentation, any such documentation would be required at the discretion of the community college and therefore is not a state mandate.

The DSA (50, 51) also determined that the Chancellor's Office "Revised Guidelines and Information on AB540" ("Chancellor's Document") is an "executive order" within the meaning of Government Code Section 17516, which imposes several new requirements in addition to the statutes or regulations. It found that because neither the regulation nor the Chancellor's Document *require* additional documentation be provided, obtaining the additional documentation is not mandated by the state.

However, the district is practically compelled to pursue additional verification if it is in possession of conflicting information regarding any aspect of student eligibility.¹ If there is conflicting information on a student's questionnaire that results in the district not being able to determine the eligibility of the student, the district would be unable to comply with the state mandate that requires the district to weigh the questionnaire

¹California Community College Chancellor's Office Revised Guidelines and Information on AB540: Exemption from Nonresident Tuition, dated May 2002, note 17 on page 3:

If the district is in possession of conflicting information regarding any aspect of the student eligibility, the district should pursue additional verification (e.g. high school transcript, diploma, etc) to resolve discrepancies prior to granting this exemption." [emphasis added.]

information properly. The District's decision to grant or deny eligibility in the face of conflicting information would be arbitrary and a statutory violation. The Chancellor's Document language reinforces this when it states that the district should pursue additional verification to resolve discrepancies prior to granting this exception. Therefore, the district is practically compelled to obtain additional verification if the district is in possession of conflicting information.

Seeking Reimbursement from Students Whose Certification is Determined to be False (Chancellor's Office Document)

The DSA (52) found that seeking reimbursement from students when the certification is determined to be false is not mandated by the state. The DSA interprets the language of paragraph 38 on page 6 in the Chancellor's Document as stating that although the student is liable for the repayment of the funds, and the district is entitled to the funds, the district is not required to collect them. This interpretation is contradictory because the student's liability is only as good as the district's ability to collect. If the district is not required to collect the funds, then there is no point in holding the student liable in the first place because it is very unlikely that the student will voluntarily pay the fees without any action on the district's part. The district is practically compelled to implement procedures and conduct disciplinary proceedings for seeking reimbursement of fee waivers when a student's certification is found to be falsified, because otherwise the district would be unable to collect the fees to which it is entitled.

In addition, the district has a duty to have sound fiscal management practices and manage resources wisely under Education Code Section 41020(a)². The failure to take action to collect funds it is now entitled to under the Chancellor's Document would violate these principles. Thus, by creating the districts' entitlement to these funds, the Chancellor's Document practically compels the districts to collect them.

Loss of Nonresident Tuition Fees (Education Code Sections 68074, 68075.5, 68076, 68077, 68078(b), 68082, 68083, 68084, 68130.5, and California Code of Regulations, Sections 54045, subdivisions (b) and (c), and 54045.5)

The DSA (53) relied on *County of Sonoma v. Commission on State Mandates*, 84 Cal.App.4th 1264 (2000), in finding that the loss of nonresident tuition fees for either classifying students as residents or exempting them from paying nonresident tuition did not impose reimbursable costs. However, *County of Sonoma* is not applicable because

²California Education Code Section 41020, subdivision (a):

"It is the intent of the Legislature to encourage sound fiscal management practices among local educational agencies for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels."

this test claim has nothing to do with the legislature's power to determine budgets and shift funds which was the dispositive issue of that case.³ Rather than taking away funding previously allocated to the districts, the test claim statutes prohibit the districts from imposing fees they were previously permitted to recover.

Districts are required to expend funds to educate students of the district. The loss of nonresident tuition fees for either classifying students as residents or exempting them from paying nonresident tuition does not merely shift funds, but also prohibits revenues from being collected. The tuition fee waivers restrict the ability to raise local revenue without giving the ability to turn away these students, therefore the loss of nonresident tuition fees is an increased cost within the meaning of Article XIII B, Section 6.

Education Code Section 76000 requires admission of qualified residents and permits the admission of nonresidents. By changing the classification of nonresidents to residents, the test claim statutes take away the district's right to turn away these students. As a result, the district has an additional burden and obligation to educate these students and must incur costs in addition to the loss of revenue from waiving the tuition fee for reclassified students. The overall educational services must be maintained for nonresidents at a reduced fee. Thus, the loss of nonresident tuition fees is reimbursable.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

Attachments

C: Per Mailing List Attached

³ County of Sonoma v. Commission on State Mandates, 84 Cal.App.4th 1264, 1289 (2000):

"Thus, the only issues properly before us are those bearing on the question of whether the decision to reallocate a portion of property tax revenues in the challenged years results in a state mandated cost for a new program or higher level of service such that subvention is required."

DECLARATION OF SERVICE

Re: Test Claim 02-TC-21
Contra Costa Community College District
Tuition Fee Waivers

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimants. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated February 10, 2009, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list dated 12/04/2008 for this test claim, and to:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

☐ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 6, 2009, at Sacramento, California.



Michael Indrajaha